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THE CELEBRATION OF MARRIAGE
CORAM ASSISTENTE LAICO (C. 1112)

INTRODUCTION

One of the seven special signs of grace, instituted by Jesus Christ as the sacraments of His presence in the Church, is the sacrament of matrimony (marriage), which is an irrevocable covenant through which a man and a woman give to and receive from each other, building a profound community of life and love. The Catechism of the Catholic Church expounds that “the sacrament of Matrimony signifies the union of Christ and the Church. [...] Since marriage establishes the couple in a public state of life in the Church, it is fitting that its celebration be public” (nos. 1661, 1663 CCC).¹ This requirement has not always been evident for in accordance with Catholic doctrine what constitutes the matrimonial covenant is not the presence of a priest or a deacon but the consent of the intending parties. Moreover, in the Latin Church, the spouses themselves are the ministers of this sacrament (cf. no. 1623).² This state of affairs led to the conclusion of secret marriages (*matrimonia clandestina*). In order to counteract this practice, the Fourth Council

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¹ *Catechismus Catholicae Ecclesiae* (Libreria Editrice Vaticana 1997); the Polish translation in *Katechizm Kościoła Katolickiego*, 2nd ed. (Poznań: Pallottinum, 2002); the English translation retrieved by Translator from www.vatican.va.

² Cf. Z. JANCZEWSKI, *Ustanawianie szafarzy sakramentów świętych w Kościele łacińskim i w Kościołach wschodnich* (Warsaw: Wydawnictwo UKSW, 2004), 216–29.

of the Lateran banned this kind of unions in 1215,³ and then in 1536 the Council of Trent introduced a canonical form of marriage, thereby prescribing that only those marriages can be deemed valid which are assisted by a pastor or – with the pastor or ordinary’s permission – another priest.⁴ However, based on the decision of the Holy See, this form was not applicable in some countries.⁵ Due to difficulties which in some circumstances prevented the use of the Trent formula, the Sacred Congregation of the Council introduced an extraordinary form of marriage with the decree *Ne temere* on August 2, 1907. Pursuant to this resolution, in danger of death, the faithful were allowed to enter into marriage before any priests and two ordinary witnesses, but if the competent priest had been absent for at least a month, then the presence of two witnesses would suffice.⁶ These resolutions were upheld by *Codex Iuris Canonici*, promulgated in 1917 (cc. 1094 and 1098).⁷

During the preparatory work for the Second Vatican Council, some bishops from mission countries emphasized that the task of assisting the celebration of marriage under circumstances proper to the extraordinary form should be entrusted to lay faithful who are prepared for the celebration of the sacred ritual.⁸ Although no specific decisions were included in the conciliar documents, the post-conciliar legislation envisaged such a possibility. The Code of Canon Law of 1983 openly permits bishops of certain regions to delegate lay faithful persons to assist at marriages (cf. c. 1112).⁹ The presented study will address the post-conciliar norms governing the canonical form of marriage *coram assistente laico*.

³ FOURTH COUNCIL OF THE LATERAN, *Constitutiones*, in *Dokumenty Soborów Powszechnych*, ed. A. Baron and H. Pietras (Kraków: Wydawnictwo WAM, 2003), 2:290–93.

⁴ COUNCIL OF TRENT, Session 24, November 11, 1563, Decretum *Tametsi*, in *Dokumenty Soborów Powszechnych*, ed. A. Baron and H. Pietras (Kraków: Wydawnictwo WAM, 2005), 4:720–33; for more on the forms of contracting marriage, see Z. JANCZEWSKI, “Materia i forma sakramentu małżeństwa,” *Ius Matrimoniale* 24 (2013): 7–23.

⁵ Cf. ZABOROWSKI, “Forma nadzwyczajna zawarcia małżeństwa,” *Ius Matrimoniale* 20 (2009): 116–30.

⁶ SACRA CONGREGATIO CONCILII, Decretum *Ne Temere*, August 2, 1907, *AAS* 40 (1907), 529–30.

⁷ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti papae XV auctoritate promulgatus. Praefatione, fontium annotatione et indice analytico-aphabetico ab E.mo Petro Card. Gasprarri auctus* (Rome: Typis Polyglottis Vaticanis, 1918).

⁸ Cf. F.R. GIL AZNAR, “La Revision de la forma canonica del matrimonio en el Concilio Vaticano II,” *Revista española de derecho canónico* 38 (1982): 517.

⁹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, January 25, 1983, *AAS* 75 (1983), pars II, 1–317; the Polish version in *Kodeks Prawa Kanonicznego*, translation approved by the Polish Episcopal Conference (Poznań: Pallottinum, 1984); the English version retrieved by Translator from www.vatican.va.

1. A LAY PERSON AS THE QUALIFIED WITNESS OF MARRIAGE UNDER THE POST-CONCILIAR LAW

In the post-conciliar period, some bishops, either individually or as members of episcopal conferences, proposed that the Holy See rescind the regulations on the extraordinary form of concluding marriage and permit a lawful conclusion of marriage instead before a lay Catholic delegated by a pastor or the local ordinary and assisted by two ordinary witnesses.¹⁰ In response to these requests, on December 7, 1971, the Sacred Congregation of the Discipline of the Sacraments addressed to ordinaries the instruction *Ad Sanctam Sedem* in the matter of the canonical celebration of marriage in the presence of witnesses only in special cases.¹¹ In the document, the Congregation rejected the proposal to abolish the extraordinary form and to introduce an *ad validitatem* requirement concerning the lay faithful assisting as qualified witnesses. Nonetheless, the Congregation observed that the admission of them as “qualified” witnesses could be beneficial. For that reason it instructed ordinaries to take care to prepare the lay faithful, who in some places could conduct catechesis on marriage (also in the extraordinary form), assist at a marriage (observing the nuptials’ right to conclude marriage before two ordinary witnesses only), and prepare the necessary documentation confirming the conclusion thereof. It was pointed out, though, that this “qualified lay witness” does not exercise the Church’s authority but his role is merely to affirm the religious character of the sacrament of Matrimony, which in this way acquires the proper ritual (liturgical) attire. The role of ordinaries was to safeguard the proper choice of persons to perform that function. First and foremost, these should be candidates for the ordained ministry, seminarians, catechists or members of Catholic Action. Secondly, such a person should demonstrate an adequate level of maturity (cf. AsSS).

Having applied the above-mentioned provisions, the Sacred Congregation of the Discipline of the Sacraments issued a new instruction on May 15, 1974, entitled *Sacramentalem indolem* on the canonical celebration of marriage before

¹⁰ Cf. J.D. GANDIA BARBER, *La celebración del matrimonio ante asistente laico. Estudio Canónico-Litúrgico* (Murcia: Ediciones Laborum, 2008), 27.

¹¹ SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM. Instructio ad locorum Ordinarios de canonica celebratione matrimonii coram solis testibus in casibus particularibus *Ad Sanctam Sedem*, December 7, 1971, in *Leges Ecclesiae post Codicem Iuris Canonici editae*, ed. X. Ochoa, vol. 4 (Rome: Commentarium pro Religiosis, 1974), coll. 6192–93; translated into Polish in “Instrukcja Kongregacji Sakramentów skierowana do Ordynariuszów miejsca – na temat kanonicznego zawierania małżeństwa w szczególnych wypadkach wobec samych tylko świadków,” in *Posoborowe prawodawstwo kościelne*, ed. E. Sztáfrowski, vol. 6, bk. 2 (Warsaw: Akademia Teologii Katolickiej, 1975), 361–67 [hereafter AdSS].

witnesses only in special cases.¹² According to these provisions, with regard to the subordinate territories, congregations (the Sacred Congregation of the Discipline of the Sacraments for Churches with an established ecclesiastical hierarchy and the Sacred Congregation for the Evangelization of Peoples (Propagation of the Faith) for mission territories) could permit particular local ordinaries who had obtained a positive opinion of the conference of bishops and considered relevant arguments to authorise the lay faithful of their choice to perform the duties of a qualified witness assisting at a canonical marriage. This authorisation could be granted only for a specified period (2 years at a maximum), but before that period was complete, the ordinary should submit a report of its exercise to the Holy See. Additionally, the Congregation observed that a lay person, thus authorised to participate in the ritual of matrimony in the capacity of a qualified witness, fulfils his or her role in a subsidiary manner in relation to ordained ministers. Therefore, whenever a priest or a deacon is available, he should celebrate the Sacrament. Also, the personal dimension of the authorisation was pointed out. A lay qualified witness should be personally chosen by the ordinary, and the former cannot delegate his powers. Of tremendous importance was the exclusion of the possibility to grant a dispensation from marital impediments by a lay qualified witness. For this reason, those between whom such a dispensable impediment existed had to turn to a priest to canonically contract a valid marriage (cf. SI).

In response to the said norms, the Sacred Congregation for the Divine Worship, in compliance with its own competences, prepared the ritual of matrimony contracted before a qualified lay witness.¹³ This ritual was applicable also after the new Code of Canon Law was promulgated in 1983. The celebration of marriage took place during the Liturgy of the Divine Word in a church or another worthy place. After a reading from the Bible, the lay witness said words of encouragement (*adhortatio*) or read the homily indicated by the bishop or the pastor. Then, he would ask questions concerning awareness and the voluntary character of entry into marriage, receive the nuptials' consent – in accordance with the sacramental formula – and confirmed the conclusion of marriage before the Church. Next, he would say a prayer over the rings which then the spouses would give to each other. If the administration of Holy Communion had not been planned, the qualified witness said a blessing

¹² SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM, Instructio de canonica celebratione matrimonii coram solis testibus, in casibus particularibus *Sacramentalem indolem*, May 15, 1974, in *Leges Ecclesiae post Codicem Iuris Canonici editae*, ed. X. Ochoa, vol. 5 (Rome: Commentarium pro Religiosis, 1980), coll. 6798–6800 [hereafter cited as SI].

¹³ SACRA CONGREGATIO PRO CULTU DIVINO. Normae Ordo celebrandi matrimonium coram teste qualificato laico, in *Leges Ecclesiae post Codicem Iuris Canonici editae*, vol. 5, coll. 6954–56.

of the newly wedded couple, which was in the form of a triple exhortation. The ritual ended with the Prayer of the Faithful, a common recitation of the Lord's Prayer, and final prayer. If this witness, however, was at the same time an extraordinary minister of Holy Communion, the Prayer of the Faithful and the Lord's Prayer were said after the marriage had been confirmed, and then Holy Communion was administered. The ceremony was crowned with a blessing of the newlyweds and the final prayer.

The powers granted by virtue of these documents were used in ecclesiastical practice. In the period between 1971 and 1983, at least 94 particular Churches received from the Holy See a permission to empower the lay faithful to act as qualified witnesses of marriage.¹⁴ This at times gave rise to misinterpretation of the necessity to retain the extraordinary form of marriage celebration. The Sacred Congregation for Divine Worship and the Discipline of the Sacraments was strongly opposed to proposals to do away with or restrict that form.¹⁵

It is impossible to provide a detailed and exhaustive list of local Churches benefiting from the ministry of lay qualified witnesses assisting at marriages because it cannot be ruled out that the Holy See confidentially granted to Churches in particularly difficult circumstances special *facultates* in this respect. In the recent years, the special powers granted by the Sacred Congregation for the Evangelization of Peoples (Propagation of the Faith) to the Church in China in 1978 were published,¹⁶ whereby in China the canonical form of marriage did not apply, and its religious celebration could be led by any priest, also a lector or acolyte, that is lay persons (cf. *idem*, 6).

2. CONDITIONS FOR THE ASSISTANCE OF A LAY PERSON AT MARRIAGE

In parallel to the issuance of the said regulations governing the possibility of appointing a lay faithful person to a qualified witness to a marriage, work on the final normative regulation of this matter was in progress to include it in the future

¹⁴ Cf. A. MADTHA, *Lay person as officiant at marriage celebration according to the Code of Canon Law* (Rome: Pontificia Universitas Urbaniana, 1990), 250–60.

¹⁵ Cf. SACRA CONGREGATIO PRO SACRAMENTIS ET CULTU DIVINO. Resp. Ordinario Sancti Caroli Ancudiae, Prot. N. 263/75, November 12, 1975, in *Leges Ecclesiae post Codicem Iuris Canonici editae*, vol. 5, 7084.

¹⁶ SACRA CONGREGATIO PRO GENTIUM EVANGELIZATIONE SEU DE PROPAGANDA FIDE, *Facultates et privilegia sacerdotibus fidelibusque in territorio Sinarum degentibus concessa his perdurantibus circumstantis*, Prot. N.3242/78, June 27, 1978, in *Un momento di inculturazione del Cattolicesimo in Cina. Le Facoltà speciali del 1978*, ed. L. Sabbarese (Rome: Urbaniana University Press, 2015), 95–103.

Code of Canon Law.¹⁷ This effort yielded canon 1112 of the Code currently in force: “Where there is a lack of priests and deacons, the diocesan bishop can delegate lay persons to assist at marriages, with the previous favourable vote of the conference of bishops and after he has obtained the permission of the Holy See” (c. 1112 §1). It specifies the conditions under which a lay person can become authorised to assist at the celebration of marriage. The significance of these requirements is debatable, though: are they *ad validitatem* or merely *ad liceitatem*?

In his apostolic letter *motu proprio De Concordia inter Codices*, Pope Francis added a caveat to the wording of the canon saying “subject to can. 1108, §3,” thus making reference to the provision which he himself had incorporated in the Code. Accordingly, “only the priest may validly assist at marriage between oriental parties or between a Latin party and an oriental, Catholic or non-Catholic party.”¹⁸ In this way, supreme ecclesiastical authority has removed any doubts arising in connection with the possibility of applying the norm of canon 1112 to the celebration of marriages where at least one person belongs to an Eastern rite.

The first and foremost requirement for a lay person to assist at marriage using the authority of the Church is his or her delegation. For that reason, a lay person may never be a qualified witness *ipso iure*. Yet a marriage contracted before a lay person is still a marriage celebrated in the ordinary canonical form.¹⁹ Only the diocesan bishop is competent to grant such a delegation as well as other persons made equal to him in this respect, that is an apostolic administrator in a permanent apostolic administration, a territorial prelate or abbot, an apostolic prefect, a vicar apostolic, or the bishop of a military ordinariate.²⁰ His role is to verify if in the case of a particular Church it is justifiable to use this possibility.²¹ Vicars general and episcopal vicars are exc-

¹⁷ The particular stages of work on this canon with respect to the possibility of delegating a lay person to act as a qualified witness to a canonical marriage, along with its consecutive versions, are recounted by GANDIA BARBER, *La celebración del matrimonio*, 37–50.

¹⁸ Cf. FRANCISCUS PP. “Litterae apostolicae motu proprio datae *De concordia inter Codices* (31.05.2016),” *L’Osservatore Romano*, September 16, 2016, 4–5; for Polish translation of the canons see: *Zmiany w Kodeksie prawa kanonicznego, dokonane przez papieża Franciszka w motu proprio „De concordia inter Codices” z dnia 31.05.2016 r., opublikowanego w dniu 15.09.2016 r.*, accessed March 18, 2017, <http://www.diecezja.pl/duchowni-i-konsekrowani/listy-i-dekrety/zmiany-w-kodeksie-prawa-kanonicznego-dokonane-przez-papieza-franciszka-w-motu-proprio-de-concordia-inter-codices-z-dnia-31-05-2016-r-opublikowanego-w-dniu-15-09-2016-r.html>. The English translation accessed on May 22, 2018, <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2016/09/15/160915c.html>.

¹⁹ Cf. W. GÓRALSKI, *Małżeństwo kanoniczne* (Warsaw: LexisNexis, 2011), 253–54.

²⁰ Cf. GANDIA BARBER, *La celebración del matrimonio*. 50.

²¹ Cf. L. SABBARESE, “I laici «testi qualificati» per assistere al matrimonio. Aspetti storici, interpretativi e applicativi,” in *Iustitiam et iudicium facere. Scritti in onore del Prof. Don Sabino Ardito, SDB*, ed. J. Pudmai Doss and M. Graulich (Rome: Libreria Ateneo Salesiano, 2011), 57.

cluded from the circle of persons authorised to delegate lay persons. They would be authorised to do so only by virtue a special order issued by the diocesan bishop. Under such circumstances they would exercise the same powers as diocesan bishops.²² The Holy See, in its instruction *Ecclesiae de mysterio*, pointed out that such a delegation is banned with respect to other ordained ministers (EdM, part. 2, art. 10 §3).²³

Since the legislator does not specify this delegation, it can have the form of either a general delegation (and as such it seems the best solution, considering the *ratio* of this provision) or a special delegation – addressing marriages indicated by the diocesan bishop. As rightly pointed out by Gandia Barber, the use of the latter option seems doubtful because it seems economically unsound to initiate a whole procedure in respect of only one or a few marriages, including an application for a permission of the Holy See, while the ordinary form would be available.²⁴

The question of delegation for assistance at marriage is connected with the subdelegation of this power. The legislator envisaged that “executive power delegated by another authority [other than the Holy See – R.G.] who has ordinary power can be subdelegated only for individual cases if it was delegated for all cases” (c. 137 §3). In this light, it seems that also a lay person delegated to assist at marriages can subdelegate another person in this particular case. What is more, this should be done if the available priest or deacon, who can assist at the celebration of marriage, does not have the necessary power or delegation.²⁵ This is so because the ministry of the lay person has a merely substitute nature with respect to ordained ministers. Doctrine indicates that it is impossible to subdelegate the power to assist to another lay person since such subdelegation is reserved only to the diocesan bishop. This would be possible only when the delegating bishop foresaw such an eventuality and consented to that in the very act of delegation.²⁶ However, given the unique nature of this kind of ministry and the requirements with respect to a qualified witnesses, verified by Church authorities, this seems inadvisable.

The basic condition which makes the delegation of a lay person to assist at marriages in the name of the Church possible is the lack of priests and deacons in a particular

²² Cf. *ibid.*

²³ Cf. CONGREGATIO PRO CLERICIS, PONTIFICIUM CONSILIUM PRO LAICIS, CONGREGATIO PRO DOCTRINA FIDEI, CONGREGATIO DE CULTU DIVINO ET DISCIPLINA SACRAMENTORUM, CONGREGATIO PRO EPISCOPIS, CONGREGATIO PRO GENTIUM EVANGELIZATIONE, CONGREGATIO PRO INSTITUTIS VITAE CONSECRATAE ET SOCIETATIBUS VITAE APOSTOLICAE, PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, Instructio de quibusdam questionibus circa fidelium laicorum cooperationem sacerdotum ministerium spectantem *Ecclesiae de mysterio*, August 15, 1997, *AAS* 89 (1997), 852–77 [hereafter EdM].

²⁴ Cf. GANDIA BARBER, *La celebración del matrimonio*, 55–56.

²⁵ Cf. *ibid.*, 57.

²⁶ Cf. *ibid.*

area. In accordance with the instruction *Ecclesiae de mysterio*, this shortage should be grave or there should be a complete absence of priests and deacons (EdM part. 2, art. 10 §§1 and 3). This situation can emerge in mission countries unless a permanent ecclesiastical hierarchy has been established, or in areas where despite a long Christian tradition the falling number of vocations results in dearth of priests and deacons. The assessment of the situation belongs to the diocesan bishop. The assessment, however, is subject to further verification of the conference of bishops and the Holy See.

In order to obtain permission to delegate the lay faithful to do the tasks of qualified witnesses assisting at marriages, the bishop is obliged to obtain a positive opinion of the conference of bishops regarding his diocese. Some conferences have adopted the general premise that the bishops in charge of their territory can make a submission to the Holy See requesting permission.²⁷ Nevertheless, in line with the explication provided in the instruction *Ecclesiae de mysterio*, this vote of the conference should concern only the decisions of the requesting bishop (EdM part 2, art. 10 §1). By virtue of special powers granted to the Congregation for the Evangelization of Peoples, the superiors of the Churches under its jurisdiction are exempt from this duty. In accordance with this decision, the bishop or anyone who is made equal to him by law, submits a request directly to the Congregation to grant him a permission without having to obtain a *votum favorabile* from the conference of bishops.²⁸

Another significant element of the process of power delegation with respect to assistance at marriages is to obtain the permission of the Holy See. This sort of indulgence is granted by either the Congregation for Divine Worship and the Discipline of the Sacraments or the Congregation for the Evangelization of Peoples. This is a sovereign act of a higher order which validates the diocesan bishop's decision which has the character of an exception to the general norm set forth in canon 1108.²⁹ During the Plenary Session of the Congregation for Divine Worship and the Discipline of the Sacraments in 1996 it was observed that many such requests were being submitted by bishops, also those from Europe. Not infrequently, this is caused by their wrong interpretation of lay ministry rather than the scarcity of priests or deacons.³⁰

²⁷ Sabbarese mentions 12 decisions of the conferences of bishops in this regard of the following countries: Bolivia, Canada, Chile, Ecuador, Guatemala, India, Mexico, New Zealand, Peru, the USA, Venezuela, as well as the Episcopal Conference of the Pacific. SABBARESE, "I laici «testi qualificati»," 62–64.

²⁸ Cf. A. D'AURIA, "Le Facoltà speciali della Congregazione per l'Evangelizzazione dei Popoli," *Ius Missionale* 1 (2007): 259.

²⁹ Cf. GANDIA BARBER, *La celebración del matrimonio*. 53.

³⁰ Cf. "La «Plenaria» della Congregazione per il Culto Divino e la Disciplina dei Sacramenti. 30 aprile – 4 maggio 1996. Roma," *Notitiae* 32 (1996): 442.

Similar concerns were voiced in 2001.³¹ Permissions were being granted for a period of 5 years, but the Holy See resolved to extend them for an indefinite period (*donec aliter provideatur*), so that the faithful would not be exposed to the danger of contracting an invalid marriage due to the expiration of the permission and the form not being canonical.³² Moreover, the assumption was reaffirmed that the bishops of European countries be not granted permission until the insufficiency of priests and deacons was not severe enough to justify the ministry of qualified lay witnesses at marriages.³³

Both the opinion of the conference of bishops and the permission granted by the Holy See are conditions required for the legality of the act of delegation; yet, their legal value remains dubious. The large majority of scholars believe that these are *ad validitatem* requirements,³⁴ but Castaño, applying canon 10 for this matter, claims that such conditions can only be required *ad liceitatem* because the legislator did not make them decisive.³⁵ Gandía Barber would be inclined to accept Castaño's view only with respect to the vote of the conference of bishops but not the decision of the Holy See.³⁶ The assertion that a permission issued by the proper congregation is required for the validity of the act is justified by the practice of the Congregation for Divine Worship and the Discipline of the Sacraments, which in 2005 decided to grant indulgences for an indefinite period of time in such cases to avoid situations in which the expiration of this consent (and as a result the validity of the delegation itself) would make the faithful liable to contract invalid marriages.³⁷

After the formal conditions enabling the granting of delegation *in genere* have been met, the stage of delegation *in concreto* must be reached, that is the choice of the delegated person. The legislator places specific demands on a person who is to be delegated for the task of assisting at marriages. They are correlated with the duties

³¹ Cf. "L'adunanza «Plenaria» della Congregazione per il Culto Divino e la Disciplina dei Sacramenti (21–29 settembre 2001)," *Notitiae* 37 (2001): 434.

³² Cf. "La «Plenaria» della Congregazione per il Culto Divino e la Disciplina dei Sacramenti. 1–4 marzo 2005. Roma," *Notitiae* 41 (2005): 184–85.

³³ Cf. *ibid.*, 185.

³⁴ Cf. GANDÍA BARBER, *La celebración del matrimonio*, 53–55; C. HURTADO DE MENDOZA DOMINGUEZ, "La asistencia al matrimonio canónico del testigo cualificado laico," *Religion Y Cultura* 55 (2008): 394–95; A. SŁOWIKOWSKA, *Uczestnictwo wiernych świeckich w liturgii Kościoła łacińskiego. Studium kanoniczne* (Lublin: Towarzystwo Naukowe KUL, 2014), 210; J. KRUKOWSKI, "Komentarz do kan. 1112," in *Księga IV. Uświęcające zadanie Kościoła. Część I. Sakramenty. Część II. Pozostałe akty kultu Bożego. Część III. Miejsca i czasy święte*, vol. 3/2 of *Komentarz do Kodeksu Prawa Kanonicznego*, ed. J. Krukowski (Poznań: Pallottinum, 2011), 315.

³⁵ Cf. J.F. CASTAÑO, *Il sacramento del matrimonio* (Rome: Tipolitografia Pioda, 1994), 450.

³⁶ Cf. GANDÍA BARBER, *La celebración del matrimonio*. 55.

³⁷ Cf. "La «Plenaria» della Congregazione per il Culto Divino e la Disciplina dei Sacramenti. 1–4 marzo 2005," 184–85.

imposed on that person as resulting from his or her ministry in the name of the Church. Canon 1112 §2 prescribes that suitable persons should be selected for this task – persons who will be able to prepare those preparing to be married for matrimony and able to conduct the matrimonial liturgy. This *idoneitas* should be evaluated in accordance with the criteria provided in art. 13 of the instruction *Ecclesiae de mysterio*. The legislator demands that the lay faithful who are doing a certain task in the name of the Church profess sound doctrine and present exemplary conduct, excluding those whose integrity of life or family background does not conform to the teaching of the Church (art. 13 EdM). With respect to a qualified witness to marriage, the Code does not specify whether it can be only a man but it employs the term *laicus*. Hence we can assume that this task can also be fulfilled by a woman.³⁸ It seems that a qualified lay witness should be subject to the proviso set forth in canon 1109, whereby those who have been excommunicated, interdicted or suspended from office cannot validly perform this role. Additionally, those whose situation in life does not set the good example of a Christian marriage, for instance persons who have entered into a new, non-canonical union having taken a civil-law divorce. This requirement should not be considered from the legal perspective but rather the pastoral one in the strict sense.

3. TASKS OF A QUALIFIED LAY WITNESS OF MARRIAGE CELEBRATION

In canon 1112 §2, the ecclesiastical legislator indicated the tasks before a lay witness to the celebration of marriage. Added to that are general requirements of the law which must be fulfilled by anyone who is assisting a marriage or makes it possible. On account of that, such an official witness is obliged to: give instruction to those preparing to be married (c. 1112 §2), verify their free status and determine whether nothing stands in the way of a valid and licit celebration (cc. 1066 and 1114), perform the matrimonial liturgy properly (c. 1112 §2), ask the contracting parties for their consent and receive to the marriage and receive it in the name of the Church (c. 1108 §2), and make sure that the marriage is properly registered (cc. 1121 and 1122).

Prior to the celebration of marriage, a qualified witness is to make sure that the prospective spouses are properly instructed. This is a complicated and gradual pro-

³⁸ Cf. HURTADO DE MENDOZA DOMINGUEZ, “La asistencia al matrimonio,” 389; KRUKOWSKI, “Kommentarz do kan. 1112,” 315.

cess, which should involve bishops, presbyters, deacons, the parents and the whole community of the Church. However, as Madtha notes, it is often so that this official witness bears the heaviest burden of the whole procedure. For this reason, as far as possible, he or she should receive the support of other members of the local Church, especially Christian spouses.³⁹ The role of this individual catechesis, in accordance with c. 1063, 2°, is to help the prospective spouses to enter the path of holiness in the new way of life and accept the duties involved.⁴⁰ At this stage, a pre-nuptial inquiry should be conducted intended to determine the canonical capacity of the intending parties to voice their matrimonial consent as well as to verify their free status. Since the ecclesiastical legislator imposes this obligation on the assisting person (cf. c. 1114), a qualified lay witness should act in this regard in accordance with the regulations set forth by the conference of bishops for a particular area (cf. c. 1067). Particular consideration must be given to any impediments holding between the prospective spouses and a relevant dispensation should be arranged for (if possible), because even in danger of death or for other urgent reason the right to grant dispensation is not reserved to the official lay witness.⁴¹

The main task of a qualified lay witness is to ask the prospective spouses for their consent to be married and receive it in the name of the Church. This is what happens during the liturgical celebration. After the Code of Canon Law entered into force in 1983, the ritual promulgated in 1974 was still in force. By the decree of March 19, 1990, the Congregation for Divine Worship and the Discipline of the Sacraments promulgated the second model edition of the part of the Roman Ritual entitled *Ordo celebrandi matrimonium*.⁴² It now included a chapter describing the celebratory order for a marriage contracted before an assisting lay person (nos. 118–151). In this document, the legislator states expressly that the lay person who assists at marriage is under the obligation to see to all those matters which concern both the provisions of law and the ritual, prayers, readings and the participation of the community, so that the celebration of the sacrament of Matrimony may be conducted properly, consciously and fruitfully (OCM 119).

³⁹ Cf. MADTHA, *Lay person as officiant*, 206.

⁴⁰ Madtha indicates even the main elements of the process of individual catechesis, including: the discernment of one's own capacity for marriage, the biblical foundations of education on marriage, the nature of marriage, the essential attributes of marriage (unity and indissolubility) and its goals (the good of the spouses and the offspring), as well as the interpersonal dimension of marriage; cf. *ibid.*, 209–14.

⁴¹ This is indicated by, for example, canons 1079 and 1080, which mention only a priest or a delegated deacon, not to mention the possible application of canon 1112 or the earlier specifications of the instruction *Sacramentalem indolem*.

⁴² *Rituale Romanum ex decreto Sacrosancti Oecumenici Concilii Vaticani II renovatum auctoritate Pauli PP. VI editum Ioannis Pauli PP. II cura recognitum, Ordo celebrandi matrimonium*, editio typica altera (Typis Polyglottis Vaticanis, 1991) [hereafter cited as OCM].

The contraction of marriage *coram assistente laico* occurs during the liturgy of the Word of God, celebrated in a church (OCM 120). At the beginning of the celebration, the lay assistant, who is wearing clothes befitting this kind of ritual (a seemly secular attire) or other clothes approved by the bishop (an alb, for instance), greets the congregation, invites them to praise the Lord who has shown His mercy (*Benedicus Deus, Pater totius consolationis, qui fecit nobiscum misericordiam suam*) and speaks to them in order to prepare them for the ritual of marriage and encourage their prayers for the intention of the prospective spouses. Next, the Liturgy of the Word is celebrated, which the assisting person closes with an adhortation or by reading out a homily indicated by the bishop or pastor. Then follows the central part of the ritual, that is the contraction of marriage. The assisting person turns to those to the prospective spouses to request them to declare their consent to be married before him – a person delegated by the bishop – and the congregation, and asks them appropriate questions. Then the assistant requests their consent, to which they respond with their marital vows. This stage can take the form of dialogue. Then, in the name of the Church, the assisting person receives the consent of the spouses, expressing the wish that God strengthen and bless this union. After that, the spouses are blessed and the rings are handed over. Now a hymn or a laudatory song can be sung, which is followed by the Universal Prayer.⁴³ The latter part of the ritual depends on whether or not the Holy Communion is going to be administered. If it is, after the exhortations of the Universal Prayer, the blessing of the newlyweds is said. If the Holy Communion is to be scheduled, the Lord's Prayer is said and the blessing of the newlyweds – supplemented with an appropriate oration and a quasi-trinitarian formula (*Deus repleat nos gadio et spe in credendo. Pax Christi exsultet in cordibus nostris. Spiritus Sanctus in nos sua dona profundat*) – makes the whole ritual complete. If the Holy Communion is to be administered,⁴⁴ however, the blessing of the newlyweds will be followed by the assisting person bringing the Holy Eucharist to the altar from the tabernacle and saying Our Father along with the congregation and, depending on the circumstances, invites the faithful to offer the sign of peace to one another, and administers the sacrament of the Holy Communion to himself and the congregation in the ordinary manner proper to an extraordinary minister of Holy Communion. The ritual ends with a prayer said after

⁴³ As opposed to the previous ritual spelled out in 1974, the current ritual does not prescribe any special model for the Prayer of the Faithful for the purposes of a ceremony held *coram assistente laico*, but makes reference to ordinary formulas available as provided by the ritual.

⁴⁴ This can happen if the participants of the celebration have been prepared by the sacrament of Penance and when the assisting person is authorised to perform the function of the extraordinary minister of Holy Communion.

the Holy Communion and the final formula *Deus repleat...* (OCM 120–151). The current ritual also mentions adjustments which should be applied to the marriage ritual between a Catholic and a catechumen or a non-Christian person, while it is conducted by a lay assistant (OCM 152; 156–164; 166; 173; 176).

The last element that a lay assistant to marriage needs to consider is the proper recording of the marriage in Church documentation. The ritual points out that both the spouses and the assisting persons should sign the marriage certificate after the ceremony is over. They can do it either before the congregation or in the sacristy but never at the altar (OCM 151). The legislator did not, however, determine the manner in which the lay assistant is to convey information about the concluded marriage to the competent pastor (cf. c. 1121 §1). Although canon 1121 §2 does not directly mention the assisting person as one of several persons obliged to do so, in compliance with the *ratio legis* of this precept, this obligation should be fully recognised. This reading is supported by an earlier resolution of the instruction *Sacramentalum indolem* (SI). Since there are no universal norms in this respect, the conference of bishops or competent diocesan bishops should individually determine norms for this subject area. If not *per modum legis*, then by means of a proper declaration in the delegation document since the research conducted by Madtha suggests that not all qualified lay witnesses are aware of this obligation or its canonical significance.⁴⁵

CONCLUSION

Vatican II opened up the possibility of a wider involvement of the Catholic faithful in the exercise of *munus sanctificandi* of the Church. One of the tasks entrusted to lay persons acting in place of ordained ministers is to assist at marriages as qualified witnesses in locations where the celebration of a canonical marriage is possible only in the extraordinary form for the severe shortage of priests and deacons. Stripped of its ritual character, this formula could cause the awareness of the sacramentality of marriage become blurred. This possibility was first provided by two instructions of the congregation competent for the discipline of the sacraments and then it was incorporated in the Code of Canon Law.

A qualified lay witness to marriage can exercise its powers only where there is a lack of priests and deacons by virtue of a delegation granted to him or her by the diocesan bishop. This same bishop is obliged, however, to obtain a positive opinion of his own conference of bishops and consent of the Holy See. Ecclesiastical

⁴⁵ Cf. MADTHA, *Lay person as officiant*, 265.

jurists are not unanimous in their appraisal of the legal value of these preliminary requirements. The majority of them, though, are in favour of interpreting these as conditions *ad validitatem*. A properly delegated lay person is obliged to prepare the prospective spouses for marriage (also by arranging for a pre-marital investigation), ask them for their consent to the marriage, and finally to take care of the proper recording of the contracted marriage in Church documentation.

Since for a long time to come the Church in Poland will not suffer from a dramatic decline in the number of the clergy – which would justify the use the modality mentioned above – these issues have not been addressed extensively in the Polish canonist literature. However, on account of increasing migration and the rising number of canonical marriages contracted with people who come from countries where such norms apply, it seems that a thorough study of those issues is necessary.

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THE CELEBRATION OF MARRIAGE *CORAM ASSISTENTE LAICO* (C. 1112)

Summary

Introduced after the Second Vatican Council, the norm permitting the lay person to be a qualified witness of marriage entered in the canonical form has not been yet further elaborated in Polish canonist literature. This study seeks to fill this gap in the Polish canonist literature. The first part of the presentation is devoted to the development of the norm in post-conciliar legislation before the promulgation of the 1983 Code of Canon Law. The next part presents the conditions for the delegation of a lay person to assist at marriage in accordance with canon 1112: a lack of priests and deacons, consent of the diocesan bishop with the favourable vote of the conference of bishops and the permission of the Holy See. The last addressed issue is the duties of delegated lay persons in connection with their task to prepare the intending parties for marriage, to verify their ability to conclude it, to preside over the ritual, and to record this fact in church documentation.

Key words: lay faithful; canonical form of marriage; lay qualified witness; the sanctifying function.

Translated by Tomasz Palkowski



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